

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

In Re: Paul Jason Gerlach

Chapter 13

xxx-xx-8202
Debtor.

Case No. 16-24430

MOTION UNDER RULE 3002.1(h)

Comes now the Debtor, by and through counsel, pursuant to Rule 3002.1(h) and would state:

1. The Chapter 13 Trustee filed a Notice of Final Cure in the case on December 11, 2020.
2. U.S. Bank Trust National Association as a/k/a SN Servicing Corporation (hereinafter referred to as "mortgagee") filed a notice pursuant to Rule 3002.1(c) on December 31, 2020 claiming that **\$1,967.32 (less \$497.81 in unapplied funds)** in fees, expenses, and, or charges were incurred after the case was filed that are recoverable against the Debtor or against the collateral.
3. That the Debtor's Chapter 13 plan provides for payment of mortgagee's claim pursuant to 11 U.S.C. § 1322(b)(5).
4. The Debtor contends that the payment of said amounts are not particularized by mortgagee and that an examination of the Chapter 13 Trustee's records indicates the mortgagee's proof of claim has been paid in full. In addition, the trustee's records indicate that all ongoing mortgage payments owed to mortgagee under the plan have been paid in full and are current.
5. The Debtor asks that the court determine under F.B.P.R. 3002.1(h) that the mortgage default has been cured and all required post-petition amounts have been paid.
6. That mortgagee be required to respond to this motion by January 21, 2021.

WHEREFORE, PREMISES CONSIDERED, the Debtor prays that:

1. The Court to determine that the payment of said fees, expenses, and, or other charges as set forth in the mortgagee's Response to Final Cure are not owed by the Debtor as said fees, expenses, and, or other charges have been paid in full through the chapter 13 plan;
2. That the Court preclude mortgagee from collecting same against the Debtor or against the collateral, or presenting the disputed information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was

substantially justified or is harmless;

3. To determine what charges, if any, are recoverable by mortgagee against the Debtor or against the collateral to resolve this motion;
4. Alternatively, to modify the plan to provide for payment of any recoverable amounts, to pay said amounts as an arrears claim and to prohibit mortgagee from collecting said amounts in any way that is inconsistent with this order, including but not limited to, through any adjustment in the amount of the ongoing mortgage payment;
5. That mortgagee be required to respond to this motion by January 21, 2021 or be barred from doing so thereafter;
6. That the Debtor be awarded a reasonable attorney fee; and
7. For such other and further relief to which the Debtor may be entitled.

Respectfully submitted,

JIMMY E. MCELROY AND ASSOCIATES

s/ Joseph D. Fox

Joseph D. Fox, B.P.R.No. 15809

Attorney for Debtor

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Service to:

Debtor

Debtor's Attorney

Case Trustee

Spec Loan Sv

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Certificate of Service

I, Joseph D. Fox, attorney for Debtor, do hereby certify that I have this day mailed or transmitted electronically a true and correct copy of the above pleading as hereinabove indicated.

So certified, this January 6, 2021.

/s/ Joseph D. Fox
Joseph D. Fox, # 15809